

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No.: EB-10-SE-030
)	
Kustom Musical Amplification, Inc., d/b/a)	Acct. No.: 201332100009
Hanser Music Group)	FRN: 0022521389

ORDER

Adopted: March 15, 2013**Released: March 18, 2013**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and Kustom Musical Amplification, Inc., d/b/a Hanser Music Group (KMA). The Consent Decree resolves and terminates the Bureau's investigation into KMA's compliance with Section 302(b) of the Communications Act of 1934, as amended (Act),¹ and Sections 2.803, 2.1203, 2.1204, 2.1205, 15.21, and 15.105 of the Commission's rules (Rules)² pertaining to the marketing of digital radio frequency devices, including guitar amplifiers, speaker systems, microphones, and footswitches.

2. The Bureau and KMA have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether KMA possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Act,³ and Sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803, 2.1203, 2.1204, 2.1205, 15.21, 15.105.

³ 47 U.S.C. §§ 154(i), 154(j), 503(b).

⁴ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Robert Imhoff, President, Kustom Musical Amplification, Inc., d/b/a Hanser Music Group, 3015 Kustom Drive, Hebron, KY 41048, and to Steven C. Coffaro, Esq., Keating Muething & Klekamp PLL, Counsel for Kustom Musical Amplification, Inc., d/b/a Hanser Music Group, One East 4th Street, Suite 1400, Cincinnati, OH 45202.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

**Before the
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Washington, DC 20554**

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Kustom Musical Amplification, Inc., d/b/a)	Acct. No.: 201332100009
Hanser Music Group)	FRN: 0022521389

CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Kustom Musical Amplification, Inc., d/b/a Hanser Music Group, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of Section 302(b) of the Communications Act of 1934, as amended,¹ and Sections 2.803, 2.1203, 2.1204, 2.1205, 15.21, and 15.105 of the Commission's rules² pertaining to the marketing of digital radio frequency devices, including guitar amplifiers, speaker systems, microphones, and footswitches.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which KMA is subject by virtue of its business activities, including but not limited to, the Equipment Marketing Rules.
 - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 10.
 - (g) "Covered Employees" means all employees and agents of KMA who perform, or supervise, oversee, or manage the performance of, duties that relate to KMA's responsibilities under the Equipment Marketing Rules.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803, 2.1203, 2.1204, 2.1205, 15.21, 15.105.

- (h) “Digital Device” means an unintentional radiator device or system as defined in Section 15.3(k) of the Rules.³
- (i) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (j) “Equipment Marketing Rules” means Section 302(b) of the Act⁴ and Sections 2.803, 2.1203, 2.1204, 2.1205, 15.19, 15.21, and 15.105 of the Rules⁵ and other Communications Laws governing the marketing of radio frequency devices within the United States and its territories.
- (k) “Investigation” means the investigation commenced by the Bureau’s September 10, 2010 letter of inquiry⁶ regarding whether the marketing of certain Digital Devices by KMA complies with the Equipment Marketing Rules.
- (l) “KMA” means Kustom Musical Amplification, Inc., d/b/a Hanser Music Group, and its predecessors-in-interest and successors-in-interest.
- (m) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by KMA to implement the Compliance Plan.
- (n) “Parties” means KMA and the Bureau, each of which is a “Party.”
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to Section 302(b) of the Act⁷ and Sections 2.803, 15.19, 15.21, and 15.105 of the Rules,⁸ certain Digital Devices may not be marketed in the United States unless the devices comply with the applicable technical standards as well as the administrative requirements relating to equipment labeling and consumer disclosure. Section 2.803(e)(4) of the Rules defines “marketing” as the “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment or distribution for the purpose of selling or leasing or offering for sale or lease.”⁹

3. Pursuant to Sections 2.1203, 2.1204, and 2.1205 of the Rules, a Digital Device may not be imported into the United States unless the importer, ultimate consignee, or customs broker, files with the United States Customs and Border Protection an FCC Form 740 (or the electronic equivalent thereof) declaring that the device meets one of the import conditions set forth in Section 2.1204 of the Rules.¹⁰ KMA markets Digital Devices such as guitar amplifiers, speaker systems, microphones and footswitches.

³ *Id.* § 15.3(k).

⁴ 47 U.S.C. § 302a(b).

⁵ 47 C.F.R. §§ 2.803, 2.1203, 2.1204, 2.1205, 15.19, 15.21, 15.105.

⁶ *See* Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Kustom Musical Amplification, Inc. (Sept. 10, 2010) (on file in EB-10-SE-030).

⁷ *See* 47 U.S.C. § 302a(b).

⁸ *See* 47 C.F.R. §§ 2.803, 15.19, 15.21, 15.105.

⁹ *Id.* § 2.803(e)(4).

¹⁰ *See id.* §§ 2.1203, 2.1204, 2.1205.

These Digital Devices are unintentional radiators subject to authorization via the Commission's equipment verification procedures.¹¹

4. On September 10, 2010, the Bureau's Spectrum Enforcement Division (Division) issued a letter of inquiry (LOI) to KMA, directing KMA to submit a sworn written response to a series of questions relating to KMA's marketing of Digital Devices.¹² KMA responded to the LOI on October 15, 2010 (LOI Response).¹³ In its LOI Response, KMA provided information and documents relating to the Digital Devices marketed by the company.¹⁴ In response to a subsequent inquiry from the Division,¹⁵ KMA provided information relating to its obligation to include a consumer disclosure statement in the user manual of certain Digital Devices marketed by the company.¹⁶ KMA also provided information related to its importation of certain Digital Devices and its obligation to file FCC Form 740s with the United States Customs and Border Protection in connection with the importation of such Digital Devices.¹⁷ The Bureau and KMA executed tolling agreements to toll the statute of limitations.¹⁸

III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

6. **Jurisdiction.** KMA agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to

¹¹ *Id.* § 15.101.

¹² *See supra* note 6.

¹³ *See* Letter from Robert Imhoff, President, Hanser Music Group, to Katherine Power, Attorney, Spectrum Enforcement Division, FCC Enforcement Bureau (Oct. 15, 2010) (on file in EB-10-SE-030). Hanser Music Group is a trade name for Kustom Musical Amplification, Inc.

¹⁴ *See id.*

¹⁵ *See* Letter from John D. Poutasse, Acting Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Robert Imhoff, President, Hanser Music Group (May 2, 2011) (on file in EB-10-SE-030).

¹⁶ *See* Letter from Robert Imhoff, President, Hanser Music Group, to Katherine Power, Attorney, Spectrum Enforcement Division, FCC Enforcement Bureau at 1 (May 16, 2011) (on file in EB-10-SE-030).

¹⁷ *See* E-mail from Steven C. Coffaro, Keating Muething & Klekamp PLL, Counsel to Hanser Music Group, to Katherine Power, Spectrum Enforcement Division, FCC Enforcement Bureau (Nov. 13, 2012, 11:06 EDT) (on file in EB-10-SE-030).

¹⁸ *See, e.g.,* Tolling Agreement Extension, File No. EB-10-SE-030, executed by and between John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and Steven C. Coffaro, Keating Muething & Klekamp PLL, Counsel to Hanser Music Group (July 17, 2012) (on file in EB-10-SE-030).

terminate the Investigation. In consideration for the termination of the Investigation, KMA agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against KMA concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against KMA with respect to KMA's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

9. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, KMA shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that KMA complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Equipment Marketing Rules prior to assuming his/her duties.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, KMA agrees that it shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Equipment Marketing Rules, KMA shall implement the following procedures:

- (a) **Operating Procedures on Equipment Marketing.** Within sixty (60) calendar days after the Effective Date, KMA shall establish Operating Procedures that all Covered Employees must follow to help ensure KMA's compliance with the Equipment Marketing Rules. KMA's Operating Procedures shall include internal procedures and policies specifically designed to ensure that (i) prior to the initiation of marketing (as such term is defined in Section 2.803 of the Rules¹⁹), all Digital Devices and other radio frequency devices to be marketed by KMA comply with applicable technical standards, have been properly authorized (via the certification, verification, or declaration of conformity procedures, as applicable), and comply with the applicable administrative requirements relating to equipment labeling and consumer disclosure; and (ii) KMA complies with the requirements of Sections 2.1203, 2.1204 and 2.1205 of the Rules relating to the importation and entry of Digital Devices into the United States, including the filing with the United States Customs and Border Protection of an FCC Form 740 (or the electronic equivalent thereof) that accurately identifies the importation condition(s) satisfied for each such importation.²⁰
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Equipment Marketing Rules, including the obligations to secure an equipment authorization from the FCC prior to marketing a Digital Device and to meet all FCC requirements for the importation and entry of such Digital Device into the United

¹⁹ See *supra* para. 2.

²⁰ See 47 C.F.R. §§ 2.1203, 2.1204, 2.1205.

States, and set forth the Operating Procedures that Covered Employees shall follow to help ensure KMA's compliance with the Equipment Marketing Rules. KMA shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. KMA shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

- (c) **Compliance Training Program.** KMA shall establish and implement a Compliance Training Program on compliance with the Equipment Marketing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of KMA's obligation to report any noncompliance with the Equipment Marketing Rules under paragraph 11 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. KMA shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

11. **Reporting Noncompliance.** KMA shall report any noncompliance with the Equipment Marketing Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that KMA has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that KMA has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Paul.Noone at Paul.Noone@fcc.gov and to Pamela Hairston at Pamela.Hairston@fcc.gov.

12. **Compliance Reports.** KMA shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

- (a) Each compliance report shall include a detailed description of KMA's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Equipment Marketing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of KMA, stating that the Compliance Officer has personal knowledge that KMA (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 11 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the

Rules²¹ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.

- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of KMA, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that KMA has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that KMA has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Paul Noone at Paul.Noone@fcc.gov and to Pamela Hairston at Pamela.Hairston@fcc.gov.

13. **Termination Date.** Unless stated otherwise, the obligations set forth in paragraphs 9 through 12 of this Consent Decree shall expire twenty-four (24) months after the Effective Date.

14. **Voluntary Contribution.** KMA agrees that it will make a voluntary contribution to the United States Treasury in the amount of fourteen thousand five hundred dollars (\$14,500) dollars within thirty (30) calendar days after the Effective Date. KMA shall also send electronic notification of payment to Paul Noone at Paul.Noone@fcc.gov, Pamela Hairston at Pamela.Hairston@fcc.gov, and to Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²² When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

²¹ 47 C.F.R. § 1.16.

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. **Waivers.** KMA waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. KMA shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither KMA nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and KMA shall waive any statutory right to a trial *de novo*. KMA hereby agrees to waive any claims it may have under the Equal Access to Justice Act²³ relating to the matters addressed in this Consent Decree.

16. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

17. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which KMA does not expressly consent) that provision will be superseded by such Rule or Commission order.

18. **Successors and Assigns.** KMA agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

19. **Final Settlement.** Based on the Investigation, the Bureau contends that it may have certain claims against KMA related to possible violations of Section 302(b) of the Act and Sections 2.803, 2.1203, 2.1204, 2.1205, 15.21, and 15.105 of the Rules. KMA neither admits nor denies any such violations, and the Commission does not concede or otherwise represent that its claims are not well founded. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties also agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

20. **Modifications.** This Consent Decree cannot be modified without the written consent of both Parties.

21. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

22. **Authorized Representative.** The individual signing this Consent Decree on behalf of KMA represents and warrants that he is authorized by KMA to execute this Consent Decree and to bind KMA to the obligations set forth herein. The FCC signatory represents that he is signing this Consent Decree in his official capacity and that he is authorized to execute this Consent Decree.

²³ Equal Access to Justice Act, Pub L. No. 96-481, 94 Stat. 2325 (1980) (codified at 5 U.S.C. § 504); *see also* 47 C.F.R. §§ 1.1501-1.1530.

23. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

John D. Poutasse
Chief, Spectrum Enforcement Division
Enforcement Bureau

Date

John F. Hanser III
President, Chief Executive Officer
Kustom Musical Amplification, Inc.,
d/b/a Hanser Music Group

Date